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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/581,623

03/20/2007

Viktor Reis

09244W-US

5395

30689

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05/26/2009

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EXAMINER

AUNG, SAN M

ART UNIT

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3657

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/581,623	<b>Applicant(s)</b> REIS ET AL.	
	<b>Examiner</b> SAN AUNG	<b>Art Unit</b> 3657	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 6-10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This communication is a First Office Action Non-Final rejection on the merits.  
Claims 1-10, as originally filed, are currently pending and have been considered below.

#### *Claim Objections*

1. **Claims 6-10** are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claims can not depend from any other multiple dependent claim. Claims 9 is further objected to as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1-5** are rejected under 35 U.S.C. 102(b) as being anticipated by Kramer et al. (US Patent 6,299,561 B1).

**As per claim 1**, Kramer et al. discloses Device for Controlling Level of Gear Lubricant as a Function of Speed comprising:

the gearbox arrangement (Figures 1 and 5) can be lubricated at least partially with lubricant (90) from a lubricant sump and has at least two gearbox sections (Figures 2a, 2b and 5), wherein each gearbox section has a gearbox housing part (Figures 1 and 5), wherein the gearbox housing parts of the two gearbox sections are adjacent to each

Art Unit: 3657

other and form a part of the lubricant sump (Figures 2a, 2b and 5), wherein, in particular in the normal operating mode, typically either one or the other gearbox section (Figures 2a, 2b and 5) can be operated, characterized in that between the two gearbox sections there are separating means (92), with which the two gearbox sections can be separated from each other at least partially, whereby lubricant (90) can be retained in the gearbox housing part, whose gearbox section is inactive or operated at a low rpm in the current operating state (Column 2, Lines 57-56 and Column 3, Lines 24-41, Figures 2a, 2b, and 5).

**As per claim 2**, Kramer et al. characterized in that the separating means (92) have a separating wall, which preferably does not extend up to the upper, inner wall of a gearbox housing part (Figures 2a, 2b and 5).

**As per claim 3**, Kramer et al. characterized in that the separating wall extends from the base of the gearbox arrangement at least up to a height of a gearbox input shaft or gearbox output shaft arranged in one of the gearbox housing parts (92, Figures 2a, 2b and 5).

**As per claim 4**, Kramer et al. characterized in that the separating wall has sealing means, with which the separating wall can be sealed relative to the gearbox input shaft or gearbox output shaft, if the separating wall extends across the height of the gearbox input shaft or gearbox output shaft (separator walls do not extend across the height of the gearbox input shaft, Figure 5).

**As per claim 5**, Kramer et al. characterized in that the separating means (92) can be sealed relative to a gearbox housing part with the help of additional sealing

Art Unit: 3657

means, which preferably have spring steel strips (make one piece with housing 86, Figures 2a, 2b, and 5).

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The reference Matsufuji (US Patent 5,669,479) discloses Oil Supply System for Working Vehicle with similar structure.

The reference Gee (US Patent 5,505,122) discloses Churning Loss Reduction Means for Gear Type Devices with similar features.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAN AUNG whose telephone number is (571)270-5792. The examiner can normally be reached on Mon-to- Fri 7:30 am- to 5:00 pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3657

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

San M Aung

/Robert A. Siconolfi/  
Supervisory Patent Examiner, Art  
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